HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM . . . . . 35 CENTS PER NUMBER

JURISDICTION OF FEDERAL COURTS TO ISSUE WRIT OF HABEAS CORPUS TO RELIEVE FROM COMMITMENT BY STATE COURT. — The Judiciary Act of 1789[1] did not empower the federal courts to issue the writ of *habeas corpus* in the case of a prisoner held under commitment by a state court or magistrate, except *ad testificandum.*[2] By reason of the nullification acts and the interference of South Carolina with the enforcement of the federal revenue laws, however, the Act of March 2, 1833, was made necessary; it provided that the writ should extend to prisoners committed or confined for any act done or omitted to be done in pursuance of a law of the United States or in pursuance of any order, process, or decree of any court or judge thereof.[3] These provisions are retained in section 753 of the Revised Statutes, by force of which writs of *habeas corpus* are issued by the federal courts today; this section also extends the writ to persons in custody in violation of the Constitution of the United States, etc. All these enactments can be said to have been forced upon Congress by the attempt of the states to obstruct the rights of persons under the federal government.[4] A case of such obstruction and peculiarly a proper occasion for the granting of the writ was the recent conflict between the state officials of North Carolina and the local federal court. This court, in its well-established right,[5] enjoined the individuals charged with the administration of a state law defining maximum railway rates from enforcing them *pendente lite,* on the ground of unconstitutionality.[6] But although the state authorities obeyed the positive inhibi-

[1] § 14, 1 Stat. at L. 82.
[2] See Whitten *v.* Tomlinson, 160 U. S. 231, 239.
[3] § 7, 4 Stat. at L. 634. See *In re* Neagle, 135 U. S. 1, 70.
[4] See *In re* Neagle, *supra.*
[5] See 1 HARV. L. REV. 223; 20 HARV. L. REV. 238.
[6] Southern Ry. Co. *v.* McNeil, 155 Fed. 756.

tion, they sought indirectly, by prosecuting and fining the complainant and its employees for failure to comply with the act, to nullify the benefit of the injunction and to imprison an employee for acting in conformity with it. He was, therefore, "in custody for an act done . . . in pursuance . . . of an order, process, or decree" of a federal judge, and the court properly dismissed him on a writ of *habeas corpus*. *Ex parte Wood*, 155 Fed. 190 (Circ. Ct., W. D. N. C.).

That this decision should be criticized adversely is not because the federal court lacked the authority to issue the writ, but because many federal courts regard the granting of the writ as a matter of discretion.[7] By attempting to interpret the intention of Congress,[8] but without express legislative restriction,[9] they have limited the granting of the writ, leaving the petitioner whose action has arisen in a state court to pursue his writ of error to the highest court of the state and thence, if unsuccessful, to the Supreme Court of the United States.[10] It is sometimes said that comity demands this rule.[11] But if comity means anything, it means the courtesy of equals. That courts are not foreign offices, however, and that the jurisdiction of a state is subordinate to that of the United States, even where concurrent, seem equally indisputable.[12] The explanation of the rule is rather that the usual occasion for denying the writ is when the petitioner, prosecuted under the criminal law of a state, claims to be held in violation of the Constitution of the United States; and that the indiscriminate issuing of the writ in such cases would seriously embarrass the administration of the criminal law of the states.[8] However necessary the rule may be,[13] the petitioner's right seems reduced, in the court's discretion, to a possible privilege. But the Supreme Court does not sufficiently justify this discretion, though it makes exceptions to the rule in urgent cases, awarding the writ "forthwith to the party entitled to it."[14] It is unnecessary, however, to bring the principal case within these exceptions. The rule and the exceptions should be confined to cases where parties are held in custody in violation of the Constitution. A party's rights and liberty are not ordinarily prejudiced when the state court is allowed to pass on the constitutionality of a statute under which he is indicted; but it is otherwise when he is held in custody for an act done in pursuance of a law of the United States, or for an act done in obedience of an order of a federal court. The federal court should then have no discretion in issuing the writ of *habeas corpus*, for the petitioner, as in the principal case, has an absolute right to have his case heard and disposed of in the court whose sovereign he served and whose decrees he obeyed.[15]

THE DELEGATION OF LEGISLATIVE POWER. — It is commonly held that although the legislature may not confer legislative power upon other persons or bodies, administrative powers and duties may be delegated. The ten-

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[7] *Ex parte* Royall, 117 U. S. 241.
[8] See *Ex parte* Royall, *supra*, 251.
[9] *Cf.* U. S. Rev. Stat. §§ 751, 755.
[10] Reid *v.* Jones, 187 U. S. 153.
[11] See *In re* Neagle, 39 Fed. 833, 845.
[12] See *Ex parte* Siebold, 100 U. S. 371, 392.
[13] See 6 Rep. Am. Bar Ass'n, 243; 25 Am. L. Rev. 149.
[14] See *Ex parte* Royall, *supra*, 250; *cf.* U. S. Rev. Stat. § 755; *In re* Fitton, 45 Fed 471, 474.
[15] See *In re* Neagle, 39 Fed. 833, 844.